

1.1 Vicarious liability/non-delegable duties

- **Vicarious liability** means someone else will be responsible for the defendant's negligence.
- A company may be vicariously liable if (NSW v Ibbett):
- They have an employment or agentic relationship with D
- A tort was committed
- The tort was committed in the course of (c) and D's relationship (i.e. in the course of employment)
- If a (c) is found vicariously liable, this is the same as if they were D (s3C).
- ❖ The two important questions to ask in determining whether an employer is vicariously liable and has to 'identify' the employee are:
 1. Is there an employer/ employee relationship?
 2. Were the employee's acts done within the scope or course of employment?

1.1.1 Workers/Employers

An employer employee relationship is defined in the common law (Hollis v Vabu) [cyclist deliverers, no employment contract, uniforms, etc; found: was a worker] via:

- Uniform
- Pay (wage or commission, retainer, invoice)
- Super
- Whether tools are supplied and maintained by the employer
- If P can sub-contract
- Who is in the controlling position (does the employer or the employee specify how and when the work is done) = determined by the use of the "control test"
- Tax form

Anything that D does during the course of their employment may expose (c) to vicarious liability unless there act is:

- In passion and/or resentment (Deatons v Flew)
 - The owner of a hotel was held not vicariously liable for the actions of a barmaid who threw a glass of beer into a customer's face in response to offensive comments.
 - Retribution not within course of employment as it was not "on the master's business."
- Unconnected to employment (Joel v Morrison)
- Employer prohibition limits the sphere of employment (Bugge v Brown) [fire restricted, cooking and cooked meals allowed, fire spread; held: prohibition did not limit the sphere of employment]
- Limits of employer authorisation (Ilkiw v Samuels) [Bus conductor grabbed steering wheel of bus; held: he was not authorised to do so]
- Criminal acts of employees (Morris v CW Martin)

1.1.2 Agent/Principle

In some cases a principle may be liable for the actions of his agent:

- Owner of a motor vehicle and driver (Motor Accidents Act s53) (Soblusky v Egan)
 - Owner must request that driver use the vehicle
 - The owner must have a vested interest in the vehicle being driven
 - Does not extend to other types of vehicles (Scott v Davis) [airplanes]
- When the principle holds out the agent (Colonial v PCCAC)
 - Where principle states that agent has authority, he also has liability.